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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In Re:

IKEBAL S. GILL AND
SHAHEEN GILL,

Debtors

Adversary No: 10-90383-LA

**Chapter 7
Bankruptcy Case No: 09-19462-LA7
Hon. Louis Adler**

GOVIND GILL, Successor Trustee
of the Gill Living Trust dated 2/22/90, as
restated, and Guardian Ad Litem for
RANI B. GILL,

Plaintiffs,

vs.

IKEBAL S. GILL, an individual,
SHAHEEN GILL, an individual,
VIKRAM GILL, an individual,
AMERICAN GAS MANAGEMENT,
INC., a California Corporation, and
DOES 1 through 10,

Defendants

**OPPOSITION TO PLAINTIFFS' MOTION TO
REMAND PURSUANT TO 28 U.S.C. 1453(b)
AND 28 U.S.C. 1447(c) AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF DEFENDANT'S OPPOSITION**

(Removed from San Diego Superior Court
Case No. 37-2010-00050109-CU-NP-NC)

Hearing Date: October 21, 2010
Time: 2:00 p.m.
Dept: 2

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1 **I. INTRODUCTION**

2 There are currently two nearly identical actions pending in this court brought by the above
3 entitled Plaintiffs. These two actions are a deliberate effort by Plaintiff, Govind Gill (“Govind”),
4 to drain the financial resources of his brother, Ikebal Gill (“Ikebal”), and Ikebal’s wife Shaheen
5 Gill (“Shaheen”) by forcing them to fight the same lawsuit in two different forums. This motion
6 to remand is yet another example of how Govind continues to utilize the nearly endless resources
7 of his mother, Rani Gill (“Rani”) to senselessly prosecute his brother in an effort to satisfy his
8 personal vendetta.

9 **II. BACKGROUND**

10 On December 19, 2009, Ikebal and Shaheen filed for bankruptcy (Case # 09-19462-LA7).
11 On January 6, 2010, the above entitled Plaintiffs (“Plaintiffs”) filed this Complaint in California
12 Superior Court for the County of San Diego, North County Division, alleging financial elder
13 abuse, breach of contract, and promissory estoppel (“Present COA”). Ikebal, Shaheen, American
14 Gas Management Inc. (“American Gas”), and Ikebal’s son, Vikram Gill (“Vikram”), are included
15 in Plaintiffs’ claim of financial elder abuse in the Present COA. The breach of contract and
16 promissory estoppel claims are only against Ikebal. Plaintiffs filed the Present COA without
17 receiving relief from the Court; a clear violation of the automatic stay.

18 On February 22, 2010, Plaintiffs filed for relief from stay. The motion for relief went
19 unopposed and was granted on April 20, 2010. On March 22, 2010, Plaintiffs filed an adversary
20 to determine dischargeability, Case #10-90164–LA-LA7 (“Parallel COA”) based substantively on
21 the same facts as the Present COA. On August 9, 2010, Defendants filed a notice (“Removal
22 Notice”) removing the Present COA to this Court under diversity jurisdiction. On September 9,
23 2010, Plaintiffs filed a motion to remand the Present COA alleging that removal was untimely and
24 that the Court should abstain on equitable grounds.

25 Defendants hereby oppose Plaintiffs’ motion. With this opposition to the Plaintiffs’
26 motion, Ikebal and Shaheen filed a separate motion to consolidate the Present COA and the

1 Parallel COA. Both matters are scheduled to be heard in the October 21st Hearing.

2 A third lawsuit in probate court stemming from the same facts has been filed by Plaintiffs
3 in San Diego Probate Court, Case # 37-2009-00150268-PR-CE-NC (Probate COA). The Probate
4 COA was filed on May 26, 2009 and is awaiting an evidentiary hearing. That case remains under
5 the jurisdiction of the Probate Court. Other than evidencing Plaintiffs' relentless efforts to destroy
6 what little resources the already bankrupt Defendants have, it should not be relevant to this
7 motion.

8 **III. SUMMARY OF DEFENDANTS' OPPOSITION**

9 **A. Plaintiffs' Argument I: Defendants' Notice of Removal is Not Timely and is Defective.**

10 Plaintiffs first allege that the motion to remand is untimely because it was not filed within
11 the 30 days as required under 28 U.S.C. §1446(b). Although 28 U.S.C. §1446(b) does state in part
12 that a case must be removed within 30 days of receipt of the initial pleading, Plaintiffs
13 conveniently ignore the second paragraph of 28 U.S.C. §1446(b). The second paragraph
14 establishes a one year limit for a case to be removed when removability is not evident in the initial
15 pleadings. Defendants have clearly based removal on the one year removal limit established in the
16 second paragraph of 28 U.S.C. §1446(b). The one year removal limit is applicable because the
17 citizenship of the parties is not clear from the face of the Complaint (See Removal Notice ¶14).
18 Paragraph 14 of the Removal Notice could not be clearer:

- 19 14. Removal of this action is timely because the case was filed less than one year ago and
20 citizenship of the parties is not clear from the face of the pleadings.
- 21 a. Removal based on diversity must be effected within one year after the case is filed
22 if removability is not clear from the face of the pleadings. (28 USC § 1446(b)).
 - 23 b. The Case at bar was filed on January 6, 2010 and served on Defendants Ikebal Gill
24 and Shaheen Gill on May 19, 2010.
 - 25 c. The citizenship of Plaintiff Rani Gill at the time the case was filed is not clear from
26 the face of the pleadings (See Complaint, ¶ 1)
 - d. Because the citizenship of Rani Gill is not clear from the face of the pleadings, the
removability of the case is not clear from the face of the pleadings and therefore
removable under 28 USC § 1446(b).

Plaintiffs simply choose not to address Defendants stated basis for removal because it is not

1 consistent with their argument. Consequently, the one year limit on removability applies and
2 Defendants' removal was timely under 28 U.S.C. §1446(b).

3 **B. Plaintiffs' Argument II: Discretionary Abstention.**

4 Plaintiffs argue that this case should be remanded on equitable grounds; however, a close
5 analysis of the factors shows that equitable grounds favor allowing the Present COA to remain in
6 Bankruptcy Court. In their analysis, Plaintiffs fail to address that they have haled Shaheen and
7 Vikram into State Court and Bankruptcy Court alleging the same facts and nearly the same causes
8 of action. A motion to determine dischargeability can only be heard in Bankruptcy Court in
9 connection with the relevant bankruptcy; therefore, the Parallel COA must be heard in Bankruptcy
10 Court. The Present COA, however, can be heard in State Court or Federal Court. As a result,
11 remand would force the State Court and the Bankruptcy Court to hear the exact same case. This
12 would result in needless waste of judicial resources and an increased financial burden on all
13 parties, but to the Defendants in particular. In addition to forcing different courts to hear the same
14 case twice, there is the probability of inconsistent adjudication in the Bankruptcy Court and the
15 State Court. Allowing both cases to remain in this Court, on the other hand, would permit the two
16 cases to be consolidated, pending Defendants' motion to consolidate.

17 Perhaps more importantly, the Present COA and the Parallel COA are proceeding along
18 the same time frame and both are in the early stages of litigation. Thus, equity weighs in favor of
19 dismissing Plaintiffs' motion to remand and allowing these two cases to be consolidated and
20 litigated expeditiously in Bankruptcy Court.

21 **IV. Legal Standard**

22 State claims may be removed to federal Bankruptcy Court under 28 USC § 1441 removal
23 based on diversity of citizenship, federal question or independent and separate claims. 28 USC §
24 1441; *Things Remembered, Inc. v. Petrarca*, 116 S.Ct. 494, 497 (1995). Defendant must file a
25 notice of removal within 30 days after receipt of the first pleading in the State Action that sets
26 forth a removable claim. 28 USC § 1446(b). To trigger the 30-day removal period, the facts

1 supporting removal must be evident from the “four corners of the applicable pleadings, not
2 through subjective knowledge or a duty to make further inquiry.” *Harris v. Bankers Life & Cas*
3 *Co.* 425 F3d 689, 694 (9th Cir. 2005); *Lovern v. General Motors Corp.* 121 F3d 160, 162 (4th Cir.
4 1997); *Whitaker v. American Telecasting, Inc.* 261 F3d 196, 206 (2nd Cir. 2001). If the initial
5 pleading does not clearly disclose grounds for removal, defendant's subjective knowledge of the
6 relevant facts does not affect the time for removal and defendant is under no duty to investigate
7 jurisdictional facts. *Harris v. Bankers Life & Cas. Co.*, supra, 425 F3d at 694; *Lovern v. General*
8 *Motors Corp.*, supra, 121 F3d at 162. Removal based on diversity must be effected within one
9 year after the case is filed if removability is not clear from the face of the pleadings. 28 USC §
10 1446(b).

11 The court to which the cause is removed may remand on equitable grounds 28 USC §
12 1452(b). Case law has determined what constitutes equitable grounds and the following factors
13 are taken into consideration: (1) the effect (or lack thereof) on efficient administration of the
14 estate if the court recommends remand or abstention; (2) the extent to which state law issues
15 predominate over bankruptcy issues; (3) the difficult or unsettled nature of applicable law; (4) the
16 presence of a related proceeding commenced in State Court or other nonbankruptcy proceeding;
17 (5) the jurisdictional basis, if any, other than 28 USC § 1334; (6) the degree of relatedness or
18 remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than the form
19 of an asserted core proceeding; (8) the feasibility of severing state law claims from core
20 bankruptcy matters to allow judgments to be entered in State Court (leaving enforcement to the
21 Bankruptcy Court); (9) the burden on the Bankruptcy Court's docket; (10) the likelihood that
22 commencement of the proceeding in Bankruptcy Court involves forum shopping by one of the
23 parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of non-
24 debtor parties; (13) comity; and (14) the possibility of prejudice to other parties in the action. *In re*
25 *Enron Corp.*. 296 BR 505, 508–509 (C.D. CA 2003); *Williams v. Shell Oil Co.*, 169 BR 684, 692–
26 693 (SD CA 1994); *Western Helicopters, Inc. v. Hiller Aviation, Inc.*, 97 BR 1, 6 (ED CA 1988).

7 | A. Defendants Removal Notice was Timely and Proper.

8 As stated above and in the Removal Notice, the statutory basis for removal is clear. The
9 Present COA was filed on January 6, 2010 and served on Defendants Ikebal Gill and Shaheen Gill
10 on May 19, 2010. The citizenship of Plaintiff Rani Gill at the time the case was filed is not clear
11 from the face of the pleadings. (See Complaint, ¶ 1). Because the citizenship of Rani Gill is not
12 clear from the face of the pleadings, removability is not clear from the face of the pleadings.
13 Thus, the Present COA is removable within one year under 28 USC § 1446(b).

The Present COA and Parallel COA are virtually the same. The two cases are intertwined and the result in one action is determinative of the merits of the other. It is logical to combine the two cases, or in the alternative, have the two cases heard before the same judge. The issue in the Parallel COA is whether Plaintiffs, if able to prove their claims, are entitled to a holding by the Bankruptcy Court that the alleged debt is non-dischargeable. The only way to determine dischargeability in the Parallel COA of the alleged debt is to determine the facts presented in the Present COA. If a finding of fact is issued in the Present COA in State Court, then the Parallel COA will likely be bound by the doctrine of collateral estoppel to those findings. On the other hand, if the Bankruptcy Court issues a finding of fact before the State Court, then any efforts that were made in State Court may be rendered moot or bound by the same doctrine. Creating multiple actions here where the facts are identical only leads to confusion, delay, judicial inefficiency, additional litigation costs, and a multiplicity of results. Allowing the Present COA to remain in

1 Bankruptcy Court, however, stands only to increase efficiency of the bankruptcy estate by
2 avoiding delay in adjudication of the Present COA in order to determine the Parallel COA.

3 **(1) Remanding the Present COA back to State Court will Cause Delay in the**
4 **Administration of the Bankruptcy Estate, Encourage Forum Shopping and Create**
5 **a Race to the Court House.**

6 As explained above, the only way to determine dischargeability of the alleged debt in the
7 Parallel COA is to determine the facts presented in the Present COA. Which Court will get to hear
8 the merits of the case? Which Court should be entitled to enforce its findings over the other? Is it
9 simply a matter of timing or should there be a priority? Ultimately, judicial economy and equity
10 are served by having both matter heard before this Court.

11 **(2) State Law Issues Predominate, but the Causes of Action are based on Facts that**
12 **are Closely Related to The Parallel COA.**

13 The Parallel COA is a core proceeding to determine dischargeability of debt and is directly
14 related to the Present COA. The debt is substantively based on state causes of action alleged in
15 the Present COA and the factual basis is the same in both causes of action. Viewed this light, the
16 existence of state law claims is minimally relevant to this motion to remand.

17 **(3) The Causes of Action are based on Well Settled Law.**

18 Defendants submit that the state law claims in the Present COA present no difficult or
19 unsettled areas of law (Motion to Remand, Page 7, ln. 21) As there are no new, novel areas of law
20 being explored, the Bankruptcy Court should able to adjudicate this matter easily.

21 **(4) The Present COA is a Non-Core Proceeding that is directly Related to a Core**
22 **Proceeding and Plaintiffs Asserted Right to a Jury Trial Does not Provide a Basis**
23 **For Remand.**

24 The Present COA is directly related to the Parallel COA, a core proceeding. Although a
25 bankruptcy judge does not have power to render a final judgment or order in non-core related
26 proceedings unless all parties consent, a bankruptcy judge can hear the case and submit proposed

findings of fact and conclusions of law to the district court if all parties do not consent to adjudication of the case in Bankruptcy Court. 28 USC § 157(c)(1); FRBP 9033; *In re Mann*, 907 F.2d 923, 925–926 (9th Cir. 1990). A request for a jury trial, as Plaintiffs are asserting, constitutes consent to final judgment by a bankruptcy judge, rendering any argument for lack of consent by the Plaintiffs moot because they are exercising their right to a jury trial. Local Rule 7040-3. Therefore, the fact that the Present COA is a non-core bankruptcy proceeding does not preclude this Court from hearing the merits of the case or entering a final judgment and does not provide an equitable reason for remand.

(5) Defendant’s Removal of the Present COA is not Forum Shopping Because Plaintiffs have Already Haled the Defendants into Bankruptcy Court in The Parallel COA.

Defendants have already been haled into this court on virtually the same case and must litigate the same facts in Bankruptcy Court regardless of the Court’s decision on this motion. Removal by the Defendants was an attempt to consolidate two closely related cases with the same facts for the purpose of increasing efficiency and reducing cost, not forum shopping.

(6) There are Two Non Debtor Parties to the Action, but These Parties are Closely Related to the Debtors.

The non-debtor Defendants are related to the Debtors, are only Defendants in one of the three causes of action, and are only peripherally related to the actions before the Court. One of the non-Debtor Defendants, Vikram, has not even been served. American Gas is owned in its entirety by Debtor Shaheen Gill. Vikram is the son of Debtor Ikebal. Thus, the additional non-debtor Defendants are irrelevant to this action, or, at a minimum, closely related.

(7) Comity does not provide a compelling reason to remand.

Plaintiffs assert that “when a State Court proceeding sounds in state and bears a limited connection to a debtor’s bankruptcy case, abstention is particularly compelling.” Motion to Remand, Page 8, lns 16-19 quoting *In Re United Container LLC*, 284 B.R. 162. As repeatedly

1 argued, the Present COA is substantially related to the Parallel COA and the Bankruptcy Case. As
2 a result, comity does not provide an equitable basis for remand.

3 **VI. CONCLUSION**

4 Defendants have met all procedural requirements for removal and Plaintiffs' arguments for
5 remand on equitable grounds are insufficient. It is in the best interest of the Court and the parties
6 that Plaintiffs' motion for remand is denied.

7
8 WHEREFORE, Shaheen and American Gas demands:

- 9 1. That Plaintiffs motion for remand is denied;
10 2. For costs of suit herein including reasonable attorneys fees;
11 3. For such other and further relief as the court deems just and proper.

12
13 Dated September 22, 2010

14 /s/ Ajay Gupta
15 Ajay Gupta
16 Gupta Legal Center
17 Attorney for Defendants
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